

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

United States of America,

Criminal No. 22-42(1) (DWF/DTS)

Plaintiff,

v.

**MEMORANDUM  
OPINION AND ORDER**

Saditt Fernando Ontiveros,

Defendant.

Defendant Saditt Fernando Ontiveros moves to suppress statements he gave to law enforcement during a post-arrest interview. In a Report and Recommendation (“R&R”), Magistrate Judge David T. Schultz recommended that Ontiveros’s motion be denied because Ontiveros impliedly waived his *Miranda* rights by responding to law enforcement’s questions. (Doc. No. 121, the “R&R.”) Ontiveros filed an objection to the R&R (Doc. No. 126), and the United States of America (the “Government”) responded (Doc. No. 133). After an independent review of the record and objection, the Court adopts the R&R and denies Ontiveros’s motion to suppress.

The Court has conducted a *de novo* review of the record, including a review of the arguments and submissions of counsel, pursuant to 28 U.S.C. § 636(b)(1) and Local Rule 72.2(b). The relevant factual and procedural background for the above-entitled matter is clearly and precisely set forth in the Magistrate Judge’s R&R and is incorporated by reference.

In the R&R, the Magistrate Judge concluded that Ontiveros's Fifth Amendment rights were not violated. Ontiveros "received the *Miranda* warning in Spanish and replied 'yes' in Spanish when asked whether he understood those rights." (R&R at 6.) The Magistrate Judge found that because Ontiveros voluntarily responded to questions in English—and even switched from Spanish to English early in the interview—Ontiveros impliedly waived his *Miranda* rights. Moreover, the R&R concluded that nothing in the record supported Ontiveros's argument that he was impaired at the time of questioning. Nor was there any evidence that Ontiveros did not understand the questions he was asked. The R&R thus recommended that Ontiveros's motion to suppress be denied.

Ontiveros objects to the Magistrate Judge's recommendation. He argues that because his first language is Spanish, and the interview was conducted in English, he was not able to knowingly and voluntarily waive his *Miranda* rights. He further argues that he was intimidated by the officers into waiving his *Miranda* rights.

The Court concludes that Ontiveros's objections offer no basis for departure from the Magistrate Judge's recommendation. As the R&R notes, Ontiveros was given the *Miranda* warning in Spanish. After the *Miranda* warning, Officer Johnson asked Ontiveros in Spanish, "Do you understand what your rights are?" (R&R at 3.) Ontiveros responded in Spanish, "Yes." (*Id.*) There is no evidence that Ontiveros did not understand what was read to him. To the contrary, Ontiveros stated that he understood his *Miranda* rights.

Ontiveros then proceeded to answer the officers' questions in English. The Court agrees with the R&R that Ontiveros answered the questions in English without hesitation.

He did not ask for clarification, nor did he ask Officer Johnson to translate. Lastly, there is no evidence that Ontiveros was intimidated or coerced during the interview, and Ontiveros provides no explanation to support this assertion.

In sum, the Magistrate Judge correctly concluded that Ontiveros impliedly waived his right to remain silent. Thus, Ontiveros's objection is overruled, and the Court adopts the R&R in its entirety.

### **ORDER**

Based upon the record before the Court, and the Court being otherwise duly advised in the premises, **IT IS HEREBY ORDERED** that:

1. Defendant Saditt Fernando Ontiveros's objection (Doc. No. [126]) to Magistrate Judge David T. Schultz's September 16, 2022, Report and Recommendation is **OVERRULED**.
2. Magistrate Judge David T. Schultz's Report and Recommendation (Doc. No. [121]) is **ADOPTED**.
3. Defendant Saditt Fernando Ontiveros's motion to suppress statements (Doc. No. [79]) is **DENIED**.

Dated: October 26, 2022

s/Donovan W. Frank  
DONOVAN W. FRANK  
United States District Judge